Supreme Court, U.S.
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No. 97-238

In The

Supreme Court of the United States

October Term, 1996

JUANA MUNIZ, et al.,

Petitioners,

vs.

COUNTY OF SOLANO,

Respondent.

On Petition for Writ of Certiorari from the Supreme Court of California

PETITIONER'S REPLY TO OPPOSITION

PAUL C. ROSENTHAL
Counsel of Record
MICHAEL F. TRUSKOL
Attorney for Petitioners
3620 Chiles Road
Davis, California 95616
(916) 758-0302

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I. REPLY STATEMENT

In its brief in opposition to MRS. MUNIZ' petition for a writ of certiorari the COUNTY OF SOLANO (Hereinafter referred to as the "COUNTY"), alleges that the Petitioners "merely slept on their rights and failed to pursue their appeal". But in truth, the COUNTY stepped on the rights of MRS. MUNIZ. In doing so MRS. MUNIZ suffered a deprivation of right guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

The COUNTY also avers that MRS. MUNIZ never raised any federal question at any stage of the proceedings below. This is not true. The record below reveals that MRS. MUNIZ stated the "due process" question no less than seven times in her briefings before the California Appellate and Supreme Courts. (See Petition for Writ of Certiorari, Section V, RAISING THE FEDERAL QUESTION at pgs. 11-18). The cases cited hereinbelow make clear that no particular form of words or phrases is necessary to state a federal question so long as it appears by clear and necessary intendment that the question must have been raised.

The COUNTY avers that no court below ever decided any federal question. This is not true

either. The courts below are presumed to have passed upon the "due process" argument under the rules of construction expressed in ***Mullane v. Central Hanover Bank,*** infra, 339 US 306, 70 Sup.Ct. 652, 94 L Ed 865, and line of cases.

The COUNTY wrongfully charges that petitioners' position is that the federal question was raised "by implication". Petitioners' true phraseology was "necessary implication", (Petition for Certiorari, pg. 5) consistent with the "necessary intendment" or "necessary effect" language of the cases cited hereinbelow.

The COUNTY also avers it properly gave notice of the judgment complained of. The only notice of judgment received by MRS. MUNIZ was after the ex parte judgment was obtained. This is not the issue. The issue before this Court is the Unconstitutional deprivation of prior notice of the judgment. In the circumstances of this case the Supreme Court has not decided the question. It is proper indeed that this Court decide the issue raised under the guidelines of Rule 10 (c) of the U.S. Supreme Court Rules. In this connection the COUNTY is here further corrected, to wit: Petitioners did not appeal from any judgment. They appealed from a trial court order *granting*

the COUNTY'S motion for summary judgment and from an order denying MRS. MUNIZ' motion for reconsideration of the order.

The trial court disregarded the covert judgment in its orders. The judgment only became an issue on appeal when the COUNTY hinged all its arguments on the entry of the ignored judgment. At that moment only, in the appeals process, did the deprivation of due process notice become the federal question. It is not a requirement that the federal question be raised in the trial court, so long as it was raised at the appellate level. ***Whitfield v. Ohio*** (1935) 297 U.S. 431, 435-436, 56 Sup.Ct. 532, 533, 80 L Ed 778, 782.

The COUNTY charges that Petitioners due process pleas were merely "vague references". However, every reference below to "due process" was clearly stated in the context of MRS. MUNIZ' deprivation of notice. The words "due process" should ring like a bell of freedom whenever raised in American litigation and should not be so cavalierly dismissed as the COUNTY would like us to do.

II. IS THE QUESTION A FEDERAL ONE?

A. It is sufficient if it appears, *by clear and necessary intendment*, that the federal question must have been raised and must have been decided, in order to have induced the judgment. It is not necessary that the question should appear on the record to have been raised and the decision made in direct and positive terms.

This proposition is the precedent standard of interpretation. (See, for example, *Bridge Proprietors v. Hoboken L. and I. Co.* (1863) 68 U.S. 116, 142-143, 17 L Ed 571, 576, ; *St. Louis, I. M. & S. R. Co. v. Starbird.* (1916) 243 U.S. 592, 599, 37 Sup.Ct. 462 ,465 , 61 L Ed 917, 922-923. *Green Bay & M. Canal Co. v. Patten Paper Co.* (1898) 172 U.S. 58, 68, 19 Sup.Ct. 97, 101, 43 L Ed 364, 369.

B. *No particular form of words or phrases* has ever been declared necessary in which the claim of Federal rights must be asserted. It is sufficient if it appears from the record that such rights were specially set up or claimed in the state court in such manner as to bring it to the attention of that court.

The standard of review just recited is the prevailing precedent of this Court. (*St. Louis,* supra, 243 U.S. at 599-600, 37 Sup.Ct. at 465; *Dewey v. Des Moines* (1898) 173 U.S. 193, 199, 19

Sup.Ct. 379, 381, 43 L Ed 665, 667; ***Green Bay v. Patten Paper***, supra, 172 U.S. at 67-68, 19 Sup.Ct. at 100, 43 L Ed at 368-369).

In *Bridge Proprietors v. Hoboken L. & I. Co.*, supra, 68 U.S. at 142, 17 L Ed at 575, this Court stated the following:

> "It would be a new rule of pleading and one altogether superfluous to require a party to set out specially the provision of the Constitution of the United States, on which he relies for the action of the court in the protection of his rights. If the courts of this country, and especially this court, can be supposed to take judicial notice of anything without pleading it specially, it is the Constitution of the United States. And if the plaintiff and defendant, in their pleadings, make a case which necessarily comes within some of the provisions of that instrument, this court surely can recognize the fact without requiring the pleader to say in words: 'This paragraph of the Constitution is the one involved in this case.'"

In the *Bridge* case, supra, the Constitution of the United States is not even mentioned in the record

below. In the *Dewey* case, supra, the Court stated at 173 U.S. 199, 19 Sup.Ct. 381, 43 L Ed 667, the following:

> "if the decision of the [State] Court, ***while not noticing the question,*** was such that the judgment was by its necessary effect a denial of the right claimed or referred to, it would be sufficient. It must appear from the record that the right set up or claimed was denied by the judgment ***or that such was its necessary effect*** in law. "[Emphasis added].

C. Ambiguous or obscure adjudications by state courts do not bar the Supreme Court from determining the validity of a federal question. The Supreme Court may assume there is a federal question unless the state court plainly states there are adequate and independent state grounds.

The above rule of interpretation was announced by this Court in its decision *Michigan v. Long,* (1983) 463 U.S. 1032, 1041-1042, 103 Sup.Ct. 3469, 3476-3477, 77 L Ed 2d 1202, 1214-1215.

The California Appellate Court dismissed MRS. MUNIZ' appeal "for good cause appearing" saying nothing else. Yet, MRS. MUNIZ raised her due process lack of notice plea numerous times. She

contends here that when the California Appellate Court dismissed her appeal and when the California Supreme Court denied her petition for review, that her U.S. Constitutional right of due process notice was as a necessary and unavoidable effect adjudicated and denied. She appeals to this Court for help.

III. DUE PROCESS AND PRIOR NOTICE

This Court has held that due process guarantees an "opportunity to be heard". The opportunity must be granted at a meaningful time and in a meaningful manner. This means that notice and the opportunity to be heard must be granted at a time when the deprivation of right can still be prevented.

See *Armstrong v. Manzo* (1965) 380 U.S. 545, 551-552, 85 Sup.Ct. 1187, 1191, 14 L Ed 2d 62, 66. (Meaningful time/meaningful manner); *Fuentes v. Shevin* (1971) 407 U.S. 67, 81, 92 Sup.Ct. 1983, 1994, 32 L Ed 2d 556, 570.

The COUNTY takes the position in its opposition that even if a wrong was done MRS. MUNIZ had many options. MRS. MUNIZ had no options. If she appealed from the judgment she would have

then validated it, which not even the trial court did in its orders. In any event, the trial judge asked for and received a jurisdictional brief addressing the question whether the judge had jurisdiction to rule on MRS. MUNIZ' motion for reconsideration. Hence, the judgment was under attack at the trial level without the necessity of a motion to vacate it, or similar motion, as the COUNTY argues should have been done. When the trial judge ruled on the MUNIZ motion it did so in complete derogation of the improvident judgment and rendered it a nullity.

This Court has held that *no later hearing* can undo an arbitrary taking that has already occurred that was subject to the right of procedural due process. **"This Court has not...embraced the general proposition that a wrong may be done if it can be undone".** This Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided *before* the deprivation at issue takes effect. ***Fuentes, Id.*** 407 U.S. at 82, 92 Sup.Ct. at 199, 532 L Ed 2d at 570-571. As a matter of Constitutional principle, it is no replacement for the right to a *prior* hearing that is the only truly effective safeguard against arbitrary deprivation of property. *Id.* 407 U.S. at 83, 32 L Ed 2d at

572, 92 Sup.Ct. at 1996. Only by "wip[ing] the slate clean" from the judgment will the petitioners be restored to the position they would have occupied had due process been accorded to them in the first place. ***Peralta v. Heights Medical Center, Inc.***, (1988) 485 U.S. 80, 87, 108 Sup.Ct. 896, 900, 99 L Ed 2d 75, 82.

The due process clause at a minimum requires that deprivation of life, liberty or property by an adjudication ***be preceded*** by notice and opportunity for hearing appropriate to the nature of the case. ***Mullane v. Central Hanover B. & T. Co.*** (1949) 339 U.S. 306, 313, 70 Sup.Ct. 652, 656-657, 94 L Ed 865, 873.

> "This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce, or contest." ***Id.*** 339 U.S. at 314, 70 Sup.Ct. at 657, 94 L Ed at 873.

MRS. MUNIZ should have been given the opportunity to interpose an objection to the covert bid for judgment before it was ever entered. See ***Mullane, Id.***, 339 U.S. at 314, 70 Sup.Ct. 657, 94 L Ed at 873. MRS. MUNIZ did not get that chance. But she should have.

CLOSING REMARKS

This Court has not meaningfully explored the issue of unnoticed judgments where trial courts have proper jurisdiction over the parties affected, that is where jurisdictional service of process is not in issue. The Court's rulings in *Pennoyer v. Neff* (1877) 95 U.S. 714, 24 L Ed 565 and its progeny of cases were given in the circumstance where there was no in personam jurisdiction over the party charged with judgment. MRS. MUNIZ offers to this Court an opportunity to fashion a rule that could profoundly guide lawyers to model their daily practices in the spirit of fundamental fairness that is the ultimate goal of Constitutional Due Process. To borrow the language of *Peralta v. Heights,* 485 U.S. at 87, supra, the Due Process Clause demands no less in this case.

Petitioners pray that certiorari be granted.

Respectfully Submitted,

PAUL C. ROSENTHAL
Counsel of Record
MICHAEL F. TRUSKOL
Attorney for Petitioners
3620 Chiles Road
Davis, California 95616
(916) 758-0302